

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

THE BENNETT FUNDING GROUP, INC.

Debtors

CASE NO. 96-61376

Chapter 11

Substantively Consolidated

UNION STATE BANK

Plaintiff

vs.

ADV. PRO. NO. 97-70094A

THE BENNETT FUNDING GROUP, INC.

Defendant

APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

On January 28, 1998, an Evidentiary Hearing was conducted in connection with a motion

seeking relief from the automatic stay pursuant to sections 362(d)(1) and (d)(2) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (“Code”), filed by the First National Bank of Carmi.¹ Pursuant to a stipulation, dated September 27, 1997 (“Carmi Stipulation”), certain banks agreed to participate in the Evidentiary Hearing as intervenors. Union State Bank (the “Bank”) was one of the intervenors and pursuant to ¶ 12 of the Carmi Stipulation is now requesting that the Court render a decision as to the specific objections of Richard C. Breeden, chapter 11 trustee in the above-referenced consolidated case (“Trustee”), relating to thirty-nine equipment leases (“Leases”)² in which the Bank has asserted a perfected security interest on the basis that they are chattel paper.

For the most part, the Trustee’s objections are based on the lack of model and serial numbers identifying the goods/equipment in the Leases. As this Court has previously found, in order for a lease to be chattel paper, there must be a “writing or group of writings which evidence both a monetary obligation and a security interest in specific goods.” Section 9-105(b) of the New York Uniform Commercial Code (“NYUCC”) (McKinneys 1990) (emphasis added); *see* Carmi Decision at 12.

The Court has reviewed the Leases and the additional documentation relevant to the particular transactions to which the Trustee has objected³ and concludes that the following Leases sufficiently identify the leased equipment or goods and are chattel paper: 91071400, 92050575,

¹ On May 6, 1998, the Court rendered its Memorandum-Decision, Findings of Fact, Conclusions of Law and Order. *See In re The Bennett Funding Group, Inc.*, Case No. 96-61376 (Bankr. N.D.N.Y. May 6, 1998) (“Carmi Decision”).

² Although the Bank indicates that the Trustee has objected to forty-three leases, the charts presented by both parties identify only thirty-nine leases for review by the Court.

³ “A determination of whether a lease transaction is evidenced by chattel paper is not necessarily limited to a review of the lease itself, and may be based upon all the documents which are relevant to the particular transaction.” *See* Carmi Decision at 13 (citations omitted).

94070979, 94070196, 94070273, 94071009, 94071344, 94072556, 94071140, 94083960 and 94090513⁴. With respect to Lease 94072547, which references a Toshiba copier and a laser printer, the Court concludes that it constitutes chattel paper only as to the Toshiba copier, which is identified by a serial number. Accordingly, the Court finds, in its discretion, that the extent of the Bank's security interest in that particular Lease, insofar as it is deemed to be chattel paper, is limited to a two-thirds interest.⁵

With respect to Leases 92041206, 9251581A-E, 92060137, 9407099, 94071190, 94072533, 94080777, 94080979, 94081528, 94081560, 94081808,⁶ 94082002, 94082176, 94082216, 94082370, 94082472, 94083014, 94083026, 94083242, 94090138, 94090189, 94090297 and 94090583, the Court finds that they do not contain sufficient identification of model/manufacturer or serial numbers for the Court to determine that they are chattel paper. Accordingly, they are deemed to be accounts. The Court finds no merit to the Bank's assertion that the equipment may be identified "by address location" given the fact that in most, if not all, instances the particular equipment is capable of being relocated. As far as the Bank's position that the various telephone systems are non-serialized equipment, the Court must also disagree

⁴ Lease 94090513 identifies three Mita copy systems by serial number. In addition, the Lease refers to three Okidata printers. Given the value of the copy systems, when compared with the printers, the Court, in its discretion, has determined that it will consider the entire Lease 94090513 as being chattel paper.

⁵ Under the same reasoning as that discussed at Footnote 4 regarding the value of a copier as compared to a printer, the Court has, in its discretion, allotted two-thirds of the lease to the rental on the copier. In the event that it is determined on appeal from the Carmi Decision that the intervening banks have a perfected security interest in accounts, then the Bank will be entitled to assert an additional one-third interest in all the proceeds generated from Lease 94072547.

⁶ The Court was not provided with a copy of Lease 9481808; however, based on the parties' representation that it is for a telephone system and does not have any serial number, the Court concludes that it is not chattel paper.

with that assertion. The Court has made an effort in reviewing the leases of the various banks in this case to be consistent in its rulings. The Court notes that in the case of at least one bank a lease for telephone equipment included serial numbers.⁷ Furthermore, the Court agrees with the observation made by Trustee's counsel that pieces of equipment, such as telephones, are marked with identifiable serial numbers.

Based on the foregoing, it is hereby

ORDERED that the Trustee turn over to the Bank the proceeds of the Leases found to be chattel paper, as identified above, in accordance with the terms of the Carmi Stipulation.⁸

Dated at Utica, New York

this 27th day of January 2000

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge

⁷ Lease 95040368, held by Oxford Bank & Trust, identifies a Toshiba DK 16 phone system and Axiom 250 paging system by serial numbers and was found to be chattel paper. *See Oxford Bank & Trust v. The Bennett Funding Group, Inc. (In re The Bennett Funding Group, Inc.)*, Case No. 96-61376, Adv. Pro. No. 96-70318, slip op. (Bankr. N.D.N.Y. Jan. 27, 2000).

⁸ This Decision shall be deemed an interim, interlocutory decision that shall not become final and appealable until such time as certain "Non-Common Issues" as defined in the Carmi Stipulation are finally resolved with respect to the Bank.